

The pitfalls of negotiation via email

In the case of *Stellard Pty Ltd & Anor v North Queensland Fuel Pty Ltd [2015]*, the Queensland Supreme Court recently held that negotiations via a chain of emails resulted in a binding contract, despite the email communication stating that the terms of agreement were subject to a signed contract. The judgment serves as a warning to those involved in the negotiation of a contract via email correspondence.

On 30 and 31 October 2014 an email exchange took place between the representatives of the purchaser and the vendor in relation to the sale of a service station business and freehold (Service Station). On 30 October 2015, the vendor's representative sent the purchaser's representative an email which provided the terms upon which the vendor was willing to sell. In the email exchange the vendor's representative indicated that the vendor would sign a contract on certain terms including:

- an agreed purchase price;
- an agreed deposit;
- purchase of stock at cost value;
- condition of sale being fuel tank and line testing, and environmental investigations to the buyers satisfaction;
- settlement of 60 days from contract date or prior at buyers request; and
- place of settlement, being Cairns.

On 31 October 2014, further emails were exchanged between the parties' representatives. It was ultimately agreed that the contract would be formed on the basis of the terms set out in the email from the vendor's representative to the purchaser's representative dated 30 October 2014, but '*subject to execution of the contract*'. In the email correspondence of 31 October 2014, the purchaser advised that it '*would need acceptance of our offer immediately*' and that the purchaser looked forward to receiving the vendor's '*confirmation that our offer is accepted*'. Shortly after, the vendor sent an email to the purchaser which stated that '*we accept the below offer which we understand will be subject to execution of the contract provided*'.

On 3 November 2014, the purchaser's representative sent a draft contract to the vendor's representative which contained some amendments. On 7 November 2014, the vendor's representative informed the purchaser's representative that it was not comfortable with the amendments that had been made to the contract and as such, was not willing to accept the terms of the contract. Following this, the vendor's representative then advised the purchaser that the vendor had entered into another contract for the sale of the Service Station with a different purchaser. The purchaser's representative argued that the email exchanges and conversations between the representatives for each party constituted a valid and binding contract whilst the vendor denied that a contract had been formed.

The Court held that when considering the context of the emails and conversations between the agents of the parties, it was clear that the parties intended to be immediately bound by the terms to which they had agreed. The Court applied the well-known High Court decision of *Masters v Cameron* which provides that where parties reach agreement which is to be subject to a formal contract, the agreement may be characterised as one of the following:

- parties agree on all terms and intend to be immediately bound, but wish to have those terms restated in a more complete form but not different in effect;
- parties have completely agreed on all terms, but performance is conditional on execution of a formal contract; and
- parties do not intend to conclude their negotiations/reach agreement unless a formal contract is entered into.

On the principles of *Masters v Cameron* the Court found that the parties, by expressing their offer and acceptance to be subject to contract, were merely expecting to make a further contract containing agreed additional terms. The Court agreed with the purchaser and found that there was a binding contract for the sale of the Service Station. The Court found that although the agreement was expressed in informal terms, it had to be viewed against the broader context of the emails. Viewed in the broader context, the details suggested that the parties were content to be bound immediately and exclusively by the terms upon which they had agreed.

In situations where the terms of an agreement are being negotiated via email and it is not the parties' intention to be bound by these terms until a formal contract is agreed, the representatives of the parties should always clearly state this intention in the email communication to avoid any confusion.

If you have any further questions on the judgment, or for further information, please contact:

Leneen Forde

Principal
Sladen Legal
03 9611 0142
lforde@sladen.com.au

Annabelle Moylan

Lawyer
Sladen Legal
03 9611 0148
amoylan@sladen.com.au

Sladen Legal
Level 5, 707 Collins Street
Melbourne 3008
Victoria Australia

PO Box 633
Collins Street West
Victoria 8007

T +61 3 9620 9399
F +61 3 9620 9288

sladen.com.au

